



City of Wheatland

111 C Street Street – Wheatland, California 95692
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CITY COUNCIL MEETING STAFF REPORT

Date: November 9, 2010
Agenda Item:

Subject: Second Reading of an Ordinance Approving Amendment No. 2 to City of Wheatland Development Agreement Concerning Jones Ranch Subdivision

Prepared by: Tim Raney, Community Development Director

Recommendation

Staff recommends that the Wheatland City Council conduct a second reading of the Ordinance approving Amendment No. 2 to the City of Wheatland Development Agreement Concerning Jones Ranch.

Discussion

On October 26, 2010, the Planning Commission held a public hearing on the proposed second amendment to the Development Agreement concerning Jones Ranch. The Planning Commission unanimously recommended that the City Council approve the Ordinance.

On October 26, 2010, the City Council held a separate public hearing on the proposed second amendment to the Development Agreement concerning Jones Ranch. The City Council introduced the Ordinance, conducted the public hearing, and completed the first reading of the Ordinance approving the Jones Ranch Development Agreement Amendment. The council did not request any additional changes to the Development Agreement; therefore, the October 26th version is attached.

Alternatives

The City Council could choose to not approve the amendments to the development agreement concerning Jones Ranch. The City Council could also continue the discussion to a future meeting date and direct staff to further revise the development agreement.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND
APPROVING AMENDMENT NO. 2 TO
CITY OF WHEATLAND DEVELOPMENT AGREEMENT
CONCERNING JONES RANCH SUBDIVISION**

The City Council of the City of Wheatland does ordain as follows:

SECTION 1. Purpose and Authority. The purpose of this ordinance is to approve *Amendment No. 2 to City of Wheatland Development Agreement Concerning Jones Ranch Subdivision* in the form attached hereto and incorporated herein (the “Development Agreement Amendment No. 2”). This ordinance is adopted pursuant to Government Code section 65867.5 and other applicable law.

SECTION 2. Findings. The City Council finds and determines as follows:

a. On December 27, 2005, the parties entered into the *City of Wheatland Development Agreement Concerning Jones Ranch Subdivision*, which was recorded in the Yuba County Recorder’s Office on April 18, 2006 as Document No. 2006R-007611, as previously amended by Amendment No. 1 to that development agreement, which was recorded in the Yuba County Recorder’s Office on September 11, 2008 as Document No. 2008R-014197. For the reasons explained in the recitals of the Development Agreement Amendment No. 2, the parties desire to amend the Development Agreement.

b. The Wheatland Planning Commission has conducted a duly noticed public hearing in accordance with law, and recommends that the City Council approve the Development Agreement Amendment No. 2.

b. The City Council has conducted a duly noticed public hearing in accordance with law, and now desires to approve the Development Agreement Amendment No. 2.

c. The City Council has evaluated the Development Agreement Amendment No. 2 and the City General Plan and has determined that the Development Agreement Amendment No. 2 is consistent with the General Plan.

SECTION 3. CEQA Findings. In accordance with Public Resources Code section 21166 and California Environmental Quality Act (CEQA) Guidelines section 15162, the City Council finds and determines as follows:

a. The potential environmental effects of the development project described in the Development Agreement Amendment No. 2 and Development Agreement, as previously amended by Amendment No. 1 to that development agreement, (the “Project”) have been analyzed, considered and mitigated through a final environmental impact report (“EIR”) prepared and certified in 2003 pursuant to CEQA. See City Council Resolution No. 55-03.

b. The City has evaluated and considered the changes to the Project that would be implemented by the Development Agreement Amendment No. 2. The Project changes do not involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

c. The City has evaluated and considered the changes with respect to the circumstances under which the Project is being undertaken. The changes with respect to the Project circumstances do not involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

d. The City is not aware of any new information of substantial importance that discloses that the Project will have other or more severe significant environmental effects not previously discussed or that previously rejected or other mitigation measures or alternatives are now feasible and effective.

e. Therefore, the 2003 EIR remains adequate and no subsequent EIR or further CEQA environmental analysis is required for the Project or Development Agreement Amendment No. 2.

SECTION 4. Amendment Approval. The City Council hereby approves the Development Agreement Amendment No. 2 in the attached form and authorizes and directs the City Manager to execute the Development Agreement Amendment No. 2 on behalf of the City and to record the Development Agreement Amendment No. 2 with the Yuba County Recorder within 10 days of the date of this ordinance.

SECTION 5. This ordinance shall take effect 30 days after its final passage.

SECTION 6. Within 15 days from the date of passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the City.

INTRODUCED by the City Council on the 26th day of October 2010.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the ____ day of _____ 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Enita Elphick, Mayor

Attest:

Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. ____, which ordinance was duly introduced, adopted and posted pursuant to law.

Lisa J. Thomason, City Clerk

Recording requested by, and
When recorded return to:

City of Wheatland
111 C Street
Wheatland, CA 95692

Exempt from recording fees (Government Code sections 6103 & 27383)

**AMENDMENT NO. 2 TO
CITY OF WHEATLAND DEVELOPMENT AGREEMENT
CONCERNING JONES RANCH SUBDIVISION**

This Amendment No. 2 to Development Agreement (“Amendment No. 2”) is made and entered into this _____, 2010, by and between the City of Wheatland, a general law city (“City”), and RBC Real Estate Finance Inc., a Delaware corporation (“Owner”), who agree as follows:

1. Recitals. This Agreement is made with reference to the following background recitals:

1.1. On December 27, 2005, City and Lakemont Overland Crossing, LLC entered into the *City of Wheatland Development Agreement Concerning Jones Ranch Subdivision*, a copy of which is on file in the City Clerk’s office. The Agreement was recorded in the Yuba County Recorder’s Office on April 18, 2006 as Document No. 2006R--007611. City and Lakemont Overland Crossing amended the Development Agreement in Amendment No. 1 dated June 10, 2008 and recorded on September 11, 2008 as Document No. 2008R-014197. The Development Agreement as amended is referred to as the “Agreement.” The parties acknowledge that Amendment No. 1 became effective pursuant to Amendment No. 1, section 3.

1.2. Owner has acquired the Property as described in the Agreement.

1.3. City issued a notice of intent to terminate the Agreement to Owner on February 24, 2010 based on, among two other unrelated fee payments which have since been satisfied by Owner, the apparent inability for a joint use agreement for the High School Site Addition (Lot D, as described in the Agreement) to be consummated between the City and Wheatland High School District (“WHSD”) pursuant to Agreement section 3.2.2.

1.4. The December 6, 2006 High School Mitigation Agreement between the former owner of the Property and WHSD does not contemplate joint use of the High School Site Addition with the City. WHSD also confirmed on July 22, 2010 that joint use at the High School Site Addition with the City is not acceptable.

1.5. Wheatland School District has determined that (i) the 10 acre (+/-) site designated Elementary School (Lot B) on the Tentative Map (as described in the Agreement) is unnecessary and surplus to the District’s needs, and (ii) the Project’s (as described in the Agreement) only obligation to mitigate elementary school impacts is for the Project to pay the elementary school fees established at the time a building permit is issued for Project development.

1.6. City and Owner now desire to amend the Agreement to resolve the issues described above.

2. Consent to Assignment. City consents to the assignment of the Agreement to Owner. Owner accepts the assignment of the Agreement and agrees to comply with and be bound by the Agreement. City acknowledges that Owner and other equitable owners of the Project are governed by the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et. seq.) (“Banking Act”) which imposes limits on Owner’s and other equitable owners of the Project ability to engage in construction and development activities with regard to the subdivision which is the subject of the Agreement. So long as an Owner is governed by the Banking Act, if said Owner fails to perform its obligations under this Agreement, notwithstanding terms to the contrary contained in the Agreement, the remedies of the City against an Owner subject to the Banking Act shall be limited to (i) recourse against any security furnished in connection with the Agreement, (ii) damages against said Owner, and /or (iii) the termination of the Agreement.

3. Amendments to Agreement. The Agreement is hereby amended as follows:

3.1. This Amendment No. 2 amends the High School Site Addition joint use agreement requirements of section 3.2 of the Agreement and Owner’s compliance with the High School Site Addition joint use agreement requirements shall be deemed satisfied by Owner’s compliance with this Amendment No. 2.

3.2. Section 3.2 of the Agreement is amended to read as follows:

3.2. Parks and Open Space. In satisfaction of the City’s General Plan parks and open space policies, Owner shall dedicate acreage to the City’s parks program, and provide park facility improvements, all as set forth in this section 3.2.

3.2.1. Park Improvement. Owner agrees to dedicate park land and design, install and construct the ~~following~~ park and recreation improvements to Project parks as follows:

3.2.1.1. Each of the six tot lots (as shown on the Tentative Map and Design Guidelines) shall be graded and improved with drainage, irrigation, turf, trees, walkways and playground equipment in accordance with the approved Design Guidelines and to the satisfaction of the City Manager or his or her designee. For each tot lot, prior to construction, Owner shall prepare a site improvement plan for review and approval by the City Manager or his or her designee. The park improvements shall be installed pursuant to the approved site plan at the same time as the subdivision improvements for the final subdivision map phase containing or adjacent to the tot lot and shall be completed within 45 days after the issuance of the first certificate of occupancy for that phase.

3.2.1.2. The Neighborhood Park (Lot A as shown on the Tentative Map), ~~High School Site Addition (Lot D as shown on the Tentative Map)~~ and landscape corridors/open space (Lots E through H and I through R, as shown on the Tentative Map) shall be graded and improved with drainage, irrigation, turf, walkways and other improvements in accordance with the approved Design Guidelines and to the satisfaction of the City Manager or his or her designee. For each site, prior to construction, Owner shall prepare a site improvement plan for review and approval by the City Manager or his or her designee. The park improvements shall be installed pursuant to the approved site plan at the same time as the subdivision improvements for the final subdivision map phase containing or adjacent to the park or landscape corridor and shall be completed within 45 days after the issuance of the first certificate of occupancy for that phase. The City shall be able to determine where the 2.6 acres of improved Neighborhood Park is located within the 12.6 combined acres of Lot A and Lot B area as shown on the Tentative Map. However, the 2.6 acres of improved Neighborhood

Park shall be located within reasonable proximity to adjacent subdivision infrastructure such that increased costs are not incurred by Owner because of the City's chosen location. For example, the reasonable and cost-effective location of the improved 2.6 acres of Neighborhood Park either may be at the east or west edge of the combined 12.6 acres.

3.2.1.3. Owner shall dedicate the 10 acres (+/-) of land currently designated as Elementary School (Lot B) ("Park Site B") to the City for a City park or other City uses. Except for the curb, gutter and sidewalk improvements on the perimeter of the site to be installed with the subdivision improvements, the land shall be dedicated in its unimproved condition. Dedication of 4.88 acres of Park Site B to the City shall satisfy and replace the Agreement requirement for the High School Site Addition joint use agreement. Dedication of the remaining 5.12 acres (+/-) of Park Site B to the City shall be considered excess park land dedication and the Project therefore shall receive park fee credit for the value of 5.12 acres (+/-). The value of the excess consideration for the 5.12 acres (+/-) shall be \$34,382 per acre for a total Project park fee credit of \$176,036. A park fee credit in the amount of \$1,000 per unit shall apply as provided below until the depletion of the total park fee credit of \$176,036. This equates to 176.04 units receiving the \$1,000 park fee credit.

3.2.2. Parks and Open Space Dedication. Owner shall dedicate to City the tot lots, parks and landscape corridors/open space described in section 3.2.1, except the High School Site Addition (Lot D), which shall be dedicated to the Wheatland Union High School District. The tot lots, parks and landscape corridors/open space shall be dedicated in their improved condition, except that Park Site B shall be dedicated in its unimproved condition. The tot lots, parks and landscape corridors/open space shall be dedicated to City at the time of the approval of the final subdivision map containing or located adjacent to the tot lots, park or landscape corridor/open space area. City agrees to accept the dedication so long as the dedication is in accordance with this Agreement and the Entitlements. ~~The High School Site Addition (Lot D) shall be dedicated in its improved condition to the Wheatland Union High School District after (a) the City and High School District have approved the completed improvements, and (b) the City and High School District have finally approved a joint use agreement concerning use of the High School Site Addition.~~

3.2.3. The tot lots, parks and landscape corridors/open space dedicated to the City shall be maintained by City with funding provided by the CFD Services District to be established in accordance with section 3.12.2.

3.2.4. Entire Park Land Obligation. The City agrees that the commitments contained in this section 3.2 fully satisfy the Owner's General Plan, Quimby Act, and all other park obligations imposed by law for the dedication of neighborhood/community and City-wide parks and open space and for the improvement of such parklands. Further, in consideration for Owner's excess park land dedication as described in section 3.2.1.3 ~~improvement of the High School Site Addition (Lot D) in accordance with this Agreement~~, Owner shall be entitled to a credit against the City Development Fee, as described in Section 2.8.2.1, in the amount of \$176,036 ~~Developer's direct, actual, identifiable and commercially reasonable costs of the design, installation and construction (excluding land and rights of way acquisition costs) of the completed High School Site Addition facilities and improvements (as determined by the City Engineer).~~ The credit shall be applied after dedication of Lot B to the City ~~the completion and City acceptance of the High School Site Addition improvements.~~ The credit shall be applied against the payment of the City Development Fee at the rate of \$1,000 ~~\$3,000~~ per single family dwelling (or equivalent unit, as determined by the City Engineer) beginning with building permits issued after dedication of Lot B ~~completion and City acceptance of the High School Site Addition improvements~~ and continuing until the credit amount is depleted.

4. No Effect on Other Provisions. Except for the amendments in sections 2 and 3, the remaining provisions of the Agreement shall be unaffected and remain in full force and effect.

CITY OF WHEATLAND

RBC REAL ESTATE FINANCE INC.

By: _____
Stephen L. Wright
City Manager

By: _____
_____ [name]
_____ [title]

ACKNOWLEDGMENT BY NOTARY PUBLIC
[Cal. Civ. Code, ' 1189]

State of California)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature _____ (Seal)

State of California)
County of _____)

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Signature _____ (Seal)